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ABSTRACT

The purpose of this handbook is to give both new and veteran California school board members a guide to the process of collective bargaining. In general, the board's role in collective bargaining is defined as including developing goals, selecting the board's representative, developing parameters, maintaining communications with the public, planning for emergencies, and creating guidelines for administering the contract. The role of the school board in collective bargaining and the chief negotiator's responsibilities are explained. Reasons are given for having neither the superintendent nor board members negotiate. Some general rules for effective employment relations communication are given along with specific suggestions for school district communication with the community, district staff, management employees, and nonmanagement employees. Guidelines for establishing a positive employee relations program are provided. The appendices contain a glossary; an overview of the Educational Employment Relations Act (California); and an explanation of "impasse procedures," mechanisms in the law that include mediation and fact finding. (Author/MLF)

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How to

Make Collective Bargaining Work For Your District

Prepared by the 1980 Personnel Task Force

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Acknowledgements

Personnel Task Force Members
Keith Chun, Chairman
Ted Hoffman
Mary Anne Houx
Milton Lambertson
Sheila Meyers
Norma Vander Molen
Primo Ruiz

Sheldon Baker, Executive Committee Liaison
Hugh Casey, Staff Consultant
Elaine Levy, Report Editor

Publications
Jan Parrott, Editor
Jeanne DeWitt, Graphic Production

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Introduction

Under the Rodda Act, also known as SB 160 or the Educational Employment Relations Act (EERA), school boards are legally responsible for collective bargaining with employee representatives. The purpose of this handbook is to give both new and veteran school trustees a reasonable understanding of how to make collective bargaining work in their district. Understanding all phases of the bargaining process and your role in it will enable you to evaluate the available alternatives and make the decisions your office demands. Each school district is different and each employment relations situation is unique. Therefore, this handbook attempts to give you, the board member, a guide to the process rather than a "formula" for success.

You will find that successful bargaining requires judgement, timing, and creativity as you strive to meet employee concerns without relinquishing management control. The school board is the policy-making body representing the public interest; its primary purpose is to assure quality education for children. Effective teaching and support services are necessary to achieve this goal. As officials elected by their communities, school trustees must balance their responsibility to maintain a strong educational program and to preserve management prerogatives against the often competing responsibility to bargain in good faith under the law. What it takes to accomplish this varies with each circumstance.

Several principles are clear, however. Planning and communication are the keys to reducing misunderstandings which could polarize the parties and damage education. And while board members must fully understand the negotiations process, they should, in most instances, remain at a distance from it.

In general, the board's role in collective bargaining includes

- Developing goals.
- Selecting the board's representative.
- Developing parameters.
- Maintaining communications with the public.
- Planning for emergencies.
- Creating guidelines for administering the contract.

These are the pivotal factors in reaching your goal, which is a reasonable contract with the bargaining unit, uniformly administered and arrived at with a minimum of community friction.

Chapter 1
The Role of the School Board In Collective Bargaining

The district's management bargaining team[1] relies upon parameters and guidelines from the school board in its negotiations with the exclusive representatives of the employee unit. These parameters and guidelines are simply a list of priorities of the board's negotiations goals. They must be developed before negotiations begin and must be clearly communicated to the negotiating team.

The negotiating team should know well in advance of bargaining which of the items within the scope of representation are the most important to the board.

For example,

- Do you want a multi-year or single year contract?
- What are the financial limitations of the district?
- What salary/benefit package can the district offer?
- What in the previous contract would you like to change?

Your goals might also include a fair and equitable salary settlement within the district's financial resources, and a set work day when all employees are required to be in the building. Another major goal might be that the negotiated agreement not compromise management rights.

When the employees' proposal is presented or even in anticipation of likely demands from the employee organization, the board will want to prepare its responses. For example,

- Is the proposal possible to administer?
- Is it possible to finance?
- Is it in or out of scope?
- Is the demand supported by documentation?
- Is it good for the children?
- Is there a demonstrated link between the demand and employees' jobs or the operation of schools?

In this time of financial uncertainty, your wage offer and the employee organization's wage proposal may be far apart. To close the gap, are you willing to negotiate such non-economic issues as binding arbitration or agency shop? If not, why not?

The answer to these and other questions will help you and the negotiating team formulate proposals, counterproposals and strategies at the table. It is the responsibility of your administrators to provide you with the information that you will need to answer these questions.

At some points in the negotiating process, a school board might

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[1]The management concepts herein apply equally to districts with only one negotiator as well as to districts with larger bargaining teams.

need to update or revise the team's negotiating strategies and tactics or even its original parameters due to changing circumstances. This is not to say, however, that a board should intentionally withhold from the bargaining team knowledge of concessions which it initially planned to make. Such a practice could weaken the credibility of the bargaining team and suggest that the board's representative(s) is merely a messenger. It may also constitute an unfair labor practice if the team does not really have the authority to negotiate. However, a certain amount of flexibility may be necessary to meet unforeseen circumstances.

Communicating the board position to the negotiating team is only one consideration in negotiations: It is equally important that the negotiating team keep the board informed through verbal and written reports on the status of the negotiations process. Executive session is the proper forum for these communications. Except for initial proposals, which must be "sunshined," employment relations matters are excluded from the Brown Act provisions on public meetings. Therefore, school boards not only *may* discuss negotiations in executive session, but properly should do so *only* in executive session. These sessions will allow you the necessary control of the negotiations, while placing the task of day-to-day bargaining on your negotiating team.

Whatever goes on behind closed doors, for the board to present a united front publicly is vital: The majority position must be given full public support by board concensus, even when board members are split on specific issues. If you disagree with the majority, you will certainly make your best attempt to convince other board members of your position, but this discussion must not be allowed to become public knowledge.

Under the collective bargaining law, the school district is *one* employer with *one* governing board. If differences between board members on specific employment relations issues are allowed to develop into a publicly split board, your position as employer in the negotiations process will be weakened. When this occurs, employee representatives may attempt to bargain directly with individual board members and leave the board's bargaining team without credibility.

If the collective bargaining process is to work to the advantage of the district, the sound approach should include the following:

The Board Will

- Act in good faith from a position of fairness.
- Establish parameters and determine its positions.
- Express these positions through its designated spokesperson.

- Keep its negotiating team informed.
- Ask to be fully informed by the negotiating team.
- Keep all differences between board members behind closed doors in executive session.
- Maintain its dedication to the school children and taxpayers.
- Obtain the most competent negotiations representative it is able to secure.
- Have a sense of humor and a balanced perspective.

Individual Board Members Will Not

- Take employee statements personally.
- Attempt to act on behalf of or to represent other board members or the entire board.
- Take a public position different from the majority position.
- Raise personal issues in public.
- Dilute the issues with personal prejudices and biases.

Roles For Board Members

School trustees should

- Be primarily policy makers.
- Know and understand the scope of negotiations.
- Stay cohesive and present a unified stand.
- Keep their differences behind closed doors.
- Maintain contact with their constituents, civic leaders, and local political officials.
- Project confidence in the leadership and abilities of district administrators in all contacts with the public.
- Select a district spokesperson who has credibility in the community, is well informed and articulate.
- Maintain a non-reactive, positive stance during negotiations and refer questions on specifics to the official spokesperson.
- Correct misinformation or untruths calmly and rationally and not take remarks and negotiation tactics personally.
- Communicate actively with the superintendent rather than waiting to be contacted.
- Get meaningful and visible support from their county trustees association and CSBA.

Chapter 2
Who Should Negotiate For the District?

One of the first collective bargaining decisions a school board must make is the choice of its chief negotiator. Because the rest of the negotiating team is often chosen by the chief negotiator in consultation with the school board and the superintendent, the choice of the person to represent the board at the table is usually the primary one. Also, one of the tenets of collective bargaining is that one person is designated to speak for the bargaining team and conduct the across-the-table negotiations.

Good negotiators have certain qualities in common, as well as other specific qualities that may be appropriate for your district but not for other districts. In general, a positive approach to negotiations requires a chief negotiator who is flexible, courteous, honest, patient and empathetic. The ability to interpret laws, PERB and court decisions and arbitration rulings and an understanding of public education are usually basic requirements for any district chief negotiator. And, generally, he or she is a specialist in contract language, and thus able to avoid wording which could cause problems in administering the collective bargaining agreement.

Beyond these personal characteristics, the chief negotiator's responsibilities also define the type of person you want to fill this role. The chief negotiator

- In consultation with the board and superintendent, selects the rest of the negotiating team.
- Assigns specific roles to team members and makes certain each member understands his or her assignment.
- Solicits ideas from the members of the negotiating team.
- Orchestrates the table tactics and strategies within the board's established parameters.
- Calls for assistance when necessary; contacts appropriate resource persons when there is a question to be answered.
- Keeps the board informed on the status of negotiations.
- Is directed by the board's parameters and guidelines.

Your district may have a person on staff with both the ability and interest to undertake the role of chief spokesperson at the table. Perhaps you have hired a personnel director or other administrator specifically to fill this role in your district. Whether to obtain the services of an "outside" negotiator or to train someone already on staff to undertake negotiations responsibilities will be the school board's decision.

The skills, experience and abilities of the local staff must be analyzed in light of the qualities you demand in your chief negotiator. The main consideration should be that the contract is

too important to be negotiated by someone ill-prepared or unfamiliar with the process. Another important factor to consider is whether the conflicts inherent in the bargaining process will hinder this staff person's effectiveness in performing his or her day-to-day job duties. If your analysis discloses no one on staff who has the ability and interest to act as chief spokesperson without detriment to his or her regular job performance, your district's needs may be best met by obtaining qualified assistance.

The California School Boards Association, labor law firms, private consultants and even administrators from other school districts are some of the sources of outside assistance. If financial considerations are a factor in deciding on a chief negotiator, these sources can also assist by (1) comparing the cost of their services with that of hiring an additional staff person, (2) supplying information on state reimbursement of collective bargaining costs, and (3) providing your district with an experienced at-the-table negotiator.

Should the Superintendent Negotiate?

Experience with collective bargaining in California and other states indicates that the superintendent's primary roles as chief executive officer of the district, and educational, management and staff leader are not enhanced by his or her participation in at-the-table negotiations. The climate of trust and cooperation essential for the superintendent to lead and manage the district staff can be compromised by the often adversial nature of collective bargaining. The most effective role for the superintendent in collective bargaining, therefore, is most often in delegating negotiations duties to others.

The ideal role of the superintendent would be

- To advise the team and the board during negotiations.
- To participate in management bargaining team caucuses.
- To make key recommendations on management positions.
- To direct the data gathering and back-up procedures to support the negotiating team.
- To implement the agreement.

The superintendent does not need to be at the bargaining table in order to fulfill his or her role in providing leadership and counsel to the board and the negotiation team. In fact, by staying away from the table, the superintendent can avoid situations that compromise that role or inhibit the negotiations process. For instance,

- Frankness and candor by both parties are essential ingredients of negotiations. Would the superintendent's presence inhibit the discussions?

- The roles of the members of the negotiating team encourage demonstration of leadership abilities. Would the superintendent's presence discourage this opportunity for subordinate staff's growth?
- The chief negotiator must speak for the district. Would the superintendent's presence weaken the authority and importance of the chief negotiator?
- Problems often develop during negotiations. Would the superintendent's presence put him or her in the uncomfortable position of assuming responsibility for those problems?
- Emotional conflicts and derogatory comments can be part of the give and take at the table. Would the superintendent's presence or participation injure his or her leadership role away from the table?

To further justify the superintendent's absence from the bargaining table, many districts feel that the superintendent's presence leads to the mistaken belief that negotiations are a higher district priority than education, responsible management and other district goals.

Should Board Members Negotiate?

Many of the same reasons for the absence of the superintendent from the bargaining table apply to board members.

The role of the board in making policy can be compromised by the negotiations process just as the superintendent's leadership role can be. Delegating collective bargaining responsibilities as outlined in Chapter 1 should adequately allow the school board to maintain the necessary control without infringing on other board priorities.

Although in some districts school board members have sometimes served successfully on the negotiation team, generally, arguments for the absence of board members outweigh those for their presence:

- *Time:* as non-paid lay representatives, school board members already donate considerable time and effort to the district. Adding bargaining to this commitment may be not only unrealistic, but may lead to less time available for other district and personal obligations.
- *Background:* few board members have the necessary training for and familiarity with the details and intricacies of collective bargaining.
- *Conflict:* direct board member involvement blurs the delineation between policy making and administration.

Consider also the adverse effect the presence of a board

member can have on the negotiations process itself:

- The board member who is also a negotiator increases his or her vulnerability to political pressure and stress while unnecessarily risking exposure to unpleasantness and personal conflict.
- The board member who is also a negotiator may lose the independence of his or her vote on the board by surrendering impartially at the table. By the time the board votes on ratification, the negotiators have already reached tentative agreement. It is then up to the board to accept or reject it. But if one of the board members, in the role of a negotiator, has already tentatively agreed, the entire board's role is compromised.
- The board member who acts as negotiator will find that maintaining positive relationships with staff is difficult in the collective bargaining arena. For some negotiators (on either side), it is impossible to separate ideas and opinions from the personalities who present them. This could imperil your district's personnel relations long after bargaining ends.
- The emphasis in negotiations is most often on implementation and administration rather than policy. While policy is involved, there is less discussion of what will be done (policy) than of how it will be done (administration). The presence of a board member/negotiator confuses the important distinctions between policy and administration.
- The board member who acts as negotiator gives up one of the advantages of his or her office. Employees are often represented at the table by one of their bargaining specialists. Management should also be represented by a specialist. If organizational representatives negotiate with board members, they are bargaining directly with those who also have final authority for decisions. Further, unless you are bargaining with a unit that has fewer members than your board, a single board member/negotiator represents a larger proportion of the board membership than a single employee/negotiator represents of the unit membership.
- Finally, the board member who acts as negotiator can jeopardize the authority of the chief negotiator. If the chief negotiator is seen to retire into executive session with the board, he or she can claim with authority that he or she is speaking for the entire board at the table. Can a member of a split board do the same convincingly?

In sum, the proper execution of the responsibilities of boardsmanship is demanding enough. The public interest you represent can best be served when the role of the board in labor relations remains consistent with its overall role as policy maker.

Chapter 3
Communications Guidelines

In addition to the two-way communication between the school board and the negotiating team discussed in previous chapters, other avenues of communication are also vital to harmony in employment relations. Students, parents and other taxpayers, plus administrators and employees who are not directly involved in the negotiations currently underway want to be informed. All these members of your community care about the public schools. If routes of communication between you and them are developed, potentially explosive situations resulting from negotiations disputes can be defused or their effects minimized.

Following are some general rules for effective employment relations communications:

- Listening is basic. As much as you may dislike some of the things you hear, listening well enables you to assess the complete picture.
- Sophisticated tools for assessing public opinion will allow you access to opinions beyond those expressed at public meetings. Periodic surveys of your community and staff will accurately and objectively measure a cross section of community opinion on vital issues — data you will want to have available to make and back-up your decisions.
- Information must flow freely in all directions. Beyond allowing all interested parties access to the school board at public meetings, you should develop routes of communication which allow for a mutually acceptable flow of information through printed materials and informal meetings.
- Never assume you know someone's view. Only when he or she verbalizes that view can you ask the questions that will clarify it. You may find you're not so far apart after all. Or you may ultimately agree to disagree.
- Even in the area of collective bargaining, where the actual negotiations process is most often private, communications among all these groups continues — often informally through rumor and one-sided communications. Your district's formal public and staff information programs can be vital for throwing light on the negotiations process.

Communication Between School District and Community

School boards are the elected representatives of their communities. In most cases, where board members and other interested members of the community maintain constant communication, the board's position truly represents the community's attitude. In addition, school boards often provide the leadership to express and act upon

community concerns. However, in some communities, reduced district resources have forced cuts in school programs and services, often alienating parents and other taxpayers from the school board they elected to juggle district priorities to cope with those limited resources. School boards are well advised to keep the community informed on the board's employment relations objectives and to strive for agreements consistent with community attitudes and opinions.

In collective bargaining, especially where there is a potential for an employee strike, communication with the community is the key to a mutual understanding that

- The board's position represents the public interest.
- The board is vigorously defending that interest.
- The community is listened to and its concerns heeded.
- The negotiations process is one of mutual compromise; to be successful, both parties and the community can "win."
- Both the board and the rest of the community will keep each other informed.

In some communities, representatives of various community groups, like the PTA, sit as non-participating observers at the bargaining table. Even the press is allowed to send observers in some school districts. Although a few districts have found this to be an effective method of community involvement, most districts have found it can impede the negotiations process. The parties at the table tend to "play" to the audience rather than to get down to the serious and candid discussions successful bargaining demands.

Whatever your decision on opening or closing negotiations to the public, the principle is this: Where the school board and community enjoy a good relationship and the board representatives vigorously defend during negotiations the interests expressed in that relationship, the contract settlement is generally acceptable to the community.

Credibility is the communications tie that binds school board and community. Regardless of any differences of opinion that might separate them, problems often disappear when the community realizes that the board is being honest.

To maintain that credibility, the district can take the following steps:

- Make available to interested parties an action summary of board minutes the day following each board meeting.
- Include the community in back-to-school activities.
- Distribute newsletters featuring social, personal and professional activities of district staff as well as updates on district news of

interest to the community.

- Appoint a citizens' committee of community leaders and an educator representative to make recommendations to the school board on popular or controversial issues.
- Include parents on committees of teachers and administrators to discuss learning objectives, student discipline, or textbook selection, for example.
- Define clearly the procedures for speakers at board meetings and perhaps provide each speaker with written information on the board's function and the names of administrators or other participants in the meeting.
- Provide graphs and interpretations of such complex topics as student achievement, district finances, and others at board meetings to facilitate understanding of progress and result.

Other methods for involving the public in its schools also involve administrators and other district employees and are discussed in subsequent sections of this chapter.

Communication With District Staff

In general, you, as a school board, will communicate directly with administrators and, through them, with the nonadministrative staff.

Individual employees and representatives of employee organizations have the same free speech rights as the rest of the members of the community to address the school board at public meetings. Therefore, employees cannot be prohibited from speaking on collective bargaining items. However, under the collective bargaining law, EERA-covered employees must *negotiate* (through their employee organizations) only with the board's appointed bargaining team — not directly with the school board. The same law prohibits the school district from bypassing the employees' exclusive representative to bargain directly with employees.

So your communications with administrators who have no collective bargaining rights will differ in both form and substance from your communications with other employees. Under collective bargaining law (EERA), administrative and other staff positions are subdivided into management, supervisory, confidential, classified and certificated employees. Understanding the differences between each of these groups of employees will clarify their relationships to each other, to the board, and to the employee organizations. These differences will also define your program for communicating with each.

Management positions include the superintendent and assistant

superintendents for personnel, instruction and so on, as well as the district's business manager, school principals, and other administrators whose job duties fit the definition of "management employee" under the EERA. This law defines such employees as those "having significant responsibilities for formulating district policies *or* administering district programs." However, the Public Employment Relations Board (PERB) has, through its administrative decisions, redefined management employees as those "having significant responsibilities for formulating district policies *and* administering district programs."

Other employees are designated "confidential." These are employees whose regular work involves access to the district's (1) confidential records and (2) meetings on employment relations: for instance, the secretary who takes notes at negotiation meetings and management caucuses would be a confidential employee.

Employees designated as management or confidential have no collective bargaining rights under EERA.

Other employees are designated rank-and-file or supervisory. Each of these groups have collective bargaining rights under EERA. If they choose to bargain collectively, supervisors' units *must* be entirely separate from the rank-and-file unit(s). Further, the supervisors' unit(s), if any, must be represented in collective bargaining by a different employee organization from the one(s) representing employees they supervise. Supervisors are defined in EERA as those

> having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

In most districts, supervisors are employees such as department heads or chairpersons, cafeteria managers and head librarians.

In addition to these distinctions, no bargaining unit of employees is allowed, under the law, to contain both certificated and classified employees.

So how does a school board communicate with all these groups of employees? The key is to balance the requirements and restrictions of the law with allowable programs for effective multi-lateral communications described in the next few pages.

Communication With Management Employees

The management team concept is of prime importance in

collective bargaining. Except in districts where the chief spokesperson is hired from outside the district specifically to fill that role, your entire bargaining team will consist of management employees. The team concept, however, extends beyond those management employees who participate at the table.

During the life of any collective bargaining agreement, those administrators who have direct day-to-day contact with employees covered under the contract also have experience in trying to live with the terms of that contract. The input of people such as principals and site administrators during the negotiations process will enable your at-the-table team to respond knowledgably to employee proposals. In addition, site administrators can help the management team identify areas in the prior contract which should be altered, added, or deleted in the subsequent contract to avoid a continuation of problems they have experienced.

After the contract is signed, your management team should meet periodically to review the terms of the contract, both for effective contract administration (discussed in Chapter 4) and as preparation for subsequent contracts.

Members of your district's management team will supply the necessary facts and figures to both the board and the bargaining team. For instance, the district's business manager supplies financial data; another administrator supplies information on educational programs; the personnel director supplies pertinent information on such things as expected attrition (who is leaving district employment) and employment relations comparisons with other districts.[1]

The team approach to district management allows the school board to assimilate all the data and to relate each item of information to the other. For instance, will the new reading program necessitate hiring new teachers and aides? Must other teachers and aides be laid off or can the budget support additional positions without layoffs? Will attrition mean program cuts or will reassignment of the remaining staff or hiring additional staff allow for full programming? How will each percentage point of salary increase affect these plans?

In these times of limited resources, few districts can afford to negotiate any economic issue without examining its impact. Even non-economic issues may involve hidden costs in money or in the board's management control. Your management team supplies the information you will need to evaluate your options and make the

[1]We recognize, of course, that in some smaller districts these functions are carried on by one or two administrators, who must supply all these kinds of information to the board.

necessary decisions.

On the other hand, you are responsible for communicating your concerns to the management team. Board policy is useless unless it is clearly translated into specific directions and communicated to the people who are responsible for implementing it. If your management team understands what the school board is doing and why, each administrator will have the information necessary to make decisions or to take action.

Effective administration requires this kind of two-way communication between policy makers and policy administrators.

In sum, members of your district's management team

- Develop and gather necessary information.
- Supply that information to the school board and negotiating team.
- Participate in at-the-table negotiations or act as resource to the bargaining team.
- Identify portions of the current contract which make managing inflexible or which create problems.
- Support the district's negotiating positions.
- Administer the contract.
- Understand the terms of the contract and board policy for effective and consistent administration.

Communication With Non-Management Employees

Communication between non-management employees and the school board is as important as between management employees and the board.

However, in the area of collective bargaining, where school boards and employees may most desire direct communication, communication needs and desires must be balanced against legal restrictions on interactions with EERA-covered employees.

During collective bargaining, especially, rumors are apt to float around the district about the employees' demands, the district's offers, the financial condition of the district, the number of layoffs anticipated and all other matters discussed at the bargaining table.

Without compromising their legal responsibilities under EERA, school boards can still effectively communicate with employees. The one caution is: never allow yourself to commit an unfair labor practice by bypassing the employees' exclusive bargaining agent to bargain directly with those employees.

The best communication program starts before bargaining begins and continues through the negotiations process into the life of the contract. In other words, communication should never cease.

For example, your district could

- Develop a school district newsletter featuring interesting employees, programs and other district news. This or another vehicle can also be the appropriate medium for negotiations updates. If the newsletter has a reputation for honesty, its coverage of the negotiations will be credible as well. Whatever vehicle you use to relay information during negotiations must be carefully edited to exclude any message that is either untrue, inflammatory or violates EERA. If properly done, the same newsletter can be used to communicate with all employees and with the community.
- Sponsor, as a board, retirement dinners and other social functions with employees where you and they can meet informally and discuss areas of mutual concern (but of course, not negotiate).
- Include employees and their organizational representatives in community back-to-school activities. Informal non-negotiating contacts with employees and their representatives "humanize" the negotiations process and the people involved in it. In addition, employees and employee representatives will gain a greater understanding of the schools if they are exposed to aspects of school operations with which they have not previously been familiar.
- Occasionally visit the schools yourself: if possible, go during times the schools are in full operation. Prearrange your visit to ensure that it is not inconvenient or misperceived as "checking up" on employees. The purpose of the visit should be to emphasize your concern for the schools, students and employees and to increase your understanding of school operations. Visit the lunchroom as well as the classroom: Classified employees must feel they are important to the schools.
- Include employees on committees with administrators in areas in which their expertise would be valuable: For instance, include teachers on curriculum committees or secretaries and janitors on vandalism committees.
- Include employees on committees with community members to, for example, cooperatively review textbooks or playground equipment for recommended purchase.
- Include, as a regular board meeting agenda item, personal reports from employees on the particular phase of the district instructional program in which they are involved. If one or two reports are given per meeting, a major portion of the district staff will have been involved by the end of the year.

- Schedule inservice workshops on minimum pupil days in your school calendar. Workshops provide the mechanism to strengthen individual abilities and educational skills.
- Schedule regular "rap" sessions among board members, employees and administrators — but don't let these turn into bargaining sessions.
- Make sure employees have the information and materials they need to do their jobs. If requested resources are not available, tell employees why not or when they will be available.

Intrastaff Communications

Beyond the staff-board and community-board communications discussed in previous sections of this chapter, informal avenues of information exchange exist between different levels of employees and between employees and the community. A comprehensive communications program recognizes this "grapevine" and uses it to the district's advantage.

In a school district, as in any enterprise, people talk to each other. But without an effective program, information may never reach those who can act upon it or, as in the old telephone game, it may be completely distorted by the time it does.

The adversarial nature collective bargaining sometimes assumes can create a mutual "political enemies" image between school employees and school management. An ideal situation is where employees feel confidence in both management and the union. A positive working relationship between district management and employee organizations resulting in fair and equitable contracts with a minimum of friction will, of course, foster that confidence.

But beyond the negotiations arena, a complete communications program that treats each district employee as a valuable member of the school system will promote continuing employment relations harmony.

Chapter 4
Contract Administration

Once actual negotiations between the district and employee organizations have concluded in a signed agreement, it's all too easy to assume the board's collective bargaining responsibilities have ended. Such an assumption would be misleading at best and counterproductive at worst.

First, if the contract covers more than one year, it may call for periodic "reopeners" on some issues. For example, instead of committing the district to give a specified wage increase each year over the life of a multi-year contract, the parties agree to "reopen" negotiations on that and/or other specified issues each year.

Even if the negotiated agreement does not contain reopeners, employment relations is cyclical and does not begin or end at any one point. Implementation of the agreement can be of even greater significance than negotiations and should certainly not be underestimated.

If those responsible for the operation of the school system fail to consistently and uniformly carry out the requirements of the contract, the good work of the negotiators at the table may be undone. School administrators at the central office, and perhaps more importantly, at the site level, as well as each employee covered under the contract, must thoroughly understand the provisions of the agreement. Further, all administrators must clearly understand the procedures for administration and supervision outlined either in the contract, school policies or through other district communications.

While there is no magic formula for successful contract administration, the basic element is trained contract administrators. Contract administration tends to be successful in districts where all levels of administrators are proponents and protectors of management's rights. These people are trained to interpret the contract's language *literally* rather than *liberally*. Such interpretation of the contract is the essence of contract administration. And training and communication are the tools.

The communications suggestions in a previous chapter are as useful in contract administration as they are in all other areas of employment relations. Lack of communication, on the other hand, could potentially result in inconsistent contract administration through gaps in knowledge and understanding of the agreement.

And where all levels of administrators are continually involved in the negotiations process, as suggested earlier, the entire management team is fully aware that the true test of the negotiated agreement is in administering the contract on a day-to-day basis.

Basics of Contract Administration

1. Contract administration is the process of implementation, interpretation and enforcement of the agreement.
2. Contract administration is an on-going process.
3. Contract administration is the means through which the objectives of the collective bargaining relationship are fulfilled.
4. The agreement is only as good as the administration of it.
5. A centralized authority should be responsible for uniform interpretations and decisions.
6. Contract interpretation establishes practices which in turn become the basis for future negotiations; thus, consistency is imperative.

Successful contract administration requires that administrators

- Treat employees equally — without regard to union affiliation or non-affiliation or degree of union activity.
- Apply all district policies uniformly.
- Do not condone rule violations or deviations from contract or policy terms.
- Do not act hastily, yet do not unnecessarily delay required actions or decisions.
- Be aware of the meaning and implication of all decisions.
- Coordinate policies and decisions at all administrative levels to avoid inconsistencies.
- Rigidly adhere to contract procedures. This applies to all aspects of the negotiated agreement including, for example, length of work day, starting and quiting times, extra duty assignments, granting or refusing absence excuses, and giving written notices. If circumstances warrant a rare exception, it must be clear that no overall change in "past practice" is intended or contemplated.
- Do not expressly waive or modify prerogatives reserved to management.
- Waive no rights granted by the agreement or by statute.
- Handle grievances fairly, quickly and precisely according to the appropriate district procedure.

In-service workshops conducted throughout the year for the entire administrative team will help ensure that all of the district's

administrators and supervisors fulfill this role, and will pinpoint problem areas to be rectified in subsequent contracts.

Certain personality qualities characterize good contract administrators; workshops to develop such qualities as patience and listening skills could be a valuable investment for your district.

In addition to in-service training, your district's communication program can be a vehicle for dissemination of the policies, rules, regulations and contract terms supervisors require to administer the contract.

Your role, as a board, is to charge upper level management with the responsibility for developing the contract administration tools necessary to translate the terms of the new agreement into a process of consistent implementation. Those tools could include, for instance, the following:

- A management team briefing session prior to implementation of

Policy Versus Contract

If a school board is to maintain both its management prerogatives and the flexibility to exercise those prerogatives, policies and negotiated contracts should be distinct and serve distinctly separate purposes.

Policy	Contract
Reached during public process by majority vote of board.	Reached during bilateral process between employee and employer representatives by collective bargaining.
May be altered by majority vote of board at any public meeting.	May be altered only through negotiations with union.
Should be broad statements of intent, yet drawn narrowly enough to give clear guidance to district administrators in carrying out board's goals; allows some freedom to interpret and implement.	Should contain explicit language allowing little flexibility in implementation and little room for errors in interpretation.
Guides the operation of school district.	Directs specific details of school operation.

the new agreement.

- Periodic in-service training of administrators and supervisors.
- Distribution of annotated copies of the agreement with complete explanations of, and comments on, relevant terms prior to the briefing or training session.
- A two-way process to communicate the problems in contract administration and to devise ways to solve those problems.
- A process to monitor employee compliance with the terms of the contract.

Part of contract administration is the prevention of grievances. Equally important is the handling of grievances and complaints which may arise despite the best effort to avoid them. Again, trained administrators and supervisors are the key to consistency in this area.

By instituting training and communication programs in your district, you, as a school board, will help ensure that your negotiated agreement does for your district all that you expected on the day you signed it.

Chapter 5

A Positive Employee Relations Program

A Model Communications Program

The text of this chapter is derived from CSBA's Proposition 13 Information Training Manual *and was written by William J. Neff, Manager of Labor Relations, U.C. Berkeley. It is reproduced here for the reader's convenience.*

Positive employee relations don't just happen; they are the result of constructive communications. A comprehensive school district program will contain elements necessary to ensure the positive nature of employee relations in addition to the EERA collective bargaining requirements.

One such comprehensive program, advocated by William J. Neff, Manager of Labor Relations at the University of California at Berkeley, is a positive employee relations program or PERP. Writing in California School Boards Association's *Proposition 13 Information Service Training Manual*, Neff called "incomplete" an employment relations program which "begins and ends" with collective bargaining and "organizational competitiveness."

Under a PERP, information is channeled to and from the board for effective and harmonious district management and supplements the collective bargaining aspect of your employment relations program.

According to Neff, the basic elements in a PERP are *equity*, *supervision*, *problem solving*, *recognition*, and *professional fulfillment*. The following discussion is excerpted from the CSBA Training Manual.

Equity

In many situations, negative employee attitudes are the result of poor or no communication of management's decisions and rationale rather than disagreement with the decisions themselves. If, as many believe, low employee morale, based on perceptions of inequity, manifests itself in combative attitudes during contract negotiations, it follows that high employee morale is a factor in harmonious employment relations. Employee perceptions of fairness can be fostered through a district's PERP.

For instance, many districts conduct studies of their district's salary competitiveness and internal salary structures prior to bargaining wage increases. Frequently these studies are conducted by school district administrators without any input from non-management employees. However, if such an analysis includes a survey of supervisors and employees as to what comparisons *they* feel are appropriate, management can get a better idea of its next course of action: If management and employees agree on the

criteria to be used for comparison, neither will have to "sell" the results of the analysis at the bargaining table; if employee and management perceptions are far apart, management can choose to either reassess its initial comparisons based upon these new insights from employees or it can conduct programs to explain why its comparisons *are* valid.

Under either choice, district administration will be perceived as "fair" to employees without relinquishing management rights or infringing upon collective bargaining responsibilities with the exclusive representative.

Supervision

Because the foundation of a PERP is communication, the channels for transmitting board policy and employee concerns includes the people responsible for keeping these channels open: supervisors.

According to Neff, a district's PERP should consider the following in analyzing and improving the supervisory element of the program:

Although some individuals are natural leaders who will function well in a supervisory role from nearly the beginning, most will need at least some skill development and training. Of course, any amount of training and development presupposes that the individuals involved have the basic capabilities and interest in being a supervisor. Training topics should include development of communications skills, both written and verbal. Suggested sub-topics are how to orient employees to the job, schedule and direct employees, conduct meetings and properly use handbooks and personnel policies.

Supervisory training should focus on human relations topics including employee coaching, employee motivation, fairness and due process, discipline and other corrective action, coping with employee attitudes (including changing value systems) and affirmative action and non-discrimination. In other words, good supervisors should be able to recognize the needs of their employees, understand those needs, and, when reasonable, assist employees in meeting their needs.

Well-trained supervisors need the continued commitment, support, involvement and communication of middle and upper management in order to effectively function in their role.

A regular review of personnel policies and procedures helps ensure that they reflect the changing needs of both the employer and the employee. Significant effort should be expended by the employer to ensure that the personnel policies are uniformly

followed, and that exceptions to any policy are minimal in number and reasonable in nature. Here again, the importance of equity cannot be overstated.

Problem Solving

The third element of a PERP identified by Neff is problem solving.

Supervisors must be educated to avoid personalizing the fact that an employee is unhappy with the supervisor's decision and would thus like to appeal that decision to a higher level of management. Employers may find it desirable to establish a complaint or grievance procedure whereby problems may be dealt with in a more formal manner.

One of the major considerations in deciding whether a formal procedure is desirable is the size of the district. Generally, small districts have a greater ability to handle problem-solving on an informal basis than do larger ones.

One caution is in order regarding establishment of a complaint or grievance procedure. The procedure should neither become overly involved nor so complex that the substance of the problem itself is lost among the procedural regulations and time tables. In addition, an employer who establishes a complaint/grievance procedure must continually strive to maintain its credibility: That is, for the procedure to be effective, employees must feel that they have received fair treatment and an honest consideration of their problems. A complaint or grievance procedure which lacks credibility may very well harm positive employee relations to a greater degree than no procedure at all.

Another element of many PERP's is a mechanism whereby employees may candidly and anonymously express their concerns and feelings about the employment setting. This is many times accomplished through an ongoing "suggestion system" or through "employee attitude surveys." Either of these approaches must carry with it a management commitment to treat the feedback seriously and strive to implement those comments and suggestions which are deemed to be reasonable and practicable.

Recognition

Recognition of outstanding employee service to the district is another element that reinforces positive employee relations. Neff suggests that recognition programs may center around distinction awards for numbers of years of service as well as programs which recognize outstanding service to the employer.

Probably the most important and certainly the most difficult

recognition program to administer is the performance and merit program. Here again, the caliber of supervision is put to the test. Performance and merit programs will reinforce positive employee relations only if they are viewed as objective and equitable by the employees.

To attain such goals, supervisors must be trained to establish objective standards of performance and then evaluate each employee's performance based upon those established standards. Second, *bona fide* merit increases should be reserved for clearly superior performers. Merit programs which give "something to almost everybody" tend to water down the intended goal of encouraging and rewarding superior performance. Third, merit programs will tend to be ineffective and possibly negative in impact if they are not preceded by a wage or salary program which brings about increased adjustments equivalent or nearly equivalent to the increase in the cost of living. In other words, employees will not be responsive to a merit system which requires above average or superior performance just to maintain their standard of living.

Professional Fulfillment

Your district's PERP cannot be complete without considering the element of employee job satisfaction and its effect upon morale. A major source of employee discontent in many employment settings revolves around either a perceived or real lack of career and/or promotional opportunity. This is, many times, coupled with an unhappiness with the job content of their present position. These problems seem to be especially prevalent among younger employees and members of minority groups.

The employer should assess its employment function to determine whether the placements made are suitable. Is the successful candidate for a job a realistic match of skill, background and experience with the job requirement? If the candidate is overqualified and thus underemployed in a given position, the basic ingredients are present for employee discontent. Likewise, if the candidate lacks the necessary qualifications to complete the job successfully, discontent is a logical outgrowth of the poor placement.

For those employees who have higher aspirations than their present job, the employer should consider developing a career counseling program which would (a) inform interested employees of present and future job opportunities, (b) assist empioyees in assessing their present skills and experience, and (c) determine what skills and knowledge each employee should attain in order to successfully compete when future opportunities become available

within the organization. This entire program should be integrated with a strong sense of realism so that false expectations are not created nor maintained. To do otherwise only exacerbates the problem.

Conclusion

Neff's summary may define the kind of positive employee relations program your district has or could implement: The elements of a PERP must be specifically geared to each employer and employment setting, while at the same time recognizing that the overall goal of any positive employee relations program should be to assess and then meet the needs of as many employees as possible and practicable. If employees continue to feel that their needs are not being met, they will turn to other alternatives in an effort to fulfill them.

Appendix A
Glossary

agency shop: An organizational security provision of a collective bargaining agreement which requires employees, as a condition of continued employment, to join the employee organization, or to pay a service fee equal to the amount of dues, fees, and assessments. (Employees with a religious conscientious objection to such fees may instead donate the money to a charity; however, these employees must pay a service fee to the union if the union represents them in a grievance.)

arbitration, advisory: a grievance settlement procedure whereby an impartial third party renders a decision on submitted issue(s) which is not binding on the parties.

arbitration, binding: a grievance settlement procedure whereby an impartial third party renders a final and binding decision upon the parties.

arbitration, interest: the final step of the negotiating process in some states (*not* California) whereby a neutral third party defines the contract settlement when negotiations do not produce a settlement.

bargaining unit: the positions, job titles, or functions within a community of interest which define the group of employees appropriate for collective bargaining.

concerted activities: collective action undertaken by employees for the purpose of pressuring management (e.g. strikes, sickouts, slowdowns).

confidential employee: an employee who, in the regular course of duties has access to or possesses information relating to school district employment relations.

decertification: the procedure for voting out a union as exclusive representative of employees in a bargaining unit.

EERA: Educational Employment Relations Act, the collective bargaining law covering employees of public schools (kindergarten through community colleges). Also called the Rodda Act or SB 160.

employee organization: (also called the "employee association" or "union") an association of employees which represents employees in their relationship with the em-

ployer. May become the exclusive representative upon vote of employees in unit or upon voluntary recognition by the employer. Once an exclusive representative is selected, the rights of all other non-exclusive employee organizations are limited.

exclusive representative: the employee organization recognized or certified as the exclusive negotiating representative of an appropriate bargaining unit.

factfinding: a voluntary procedure following mediation in which a hearing is conducted before a three-person panel to review the positions and factual differences of the parties. The panel (which consists of a representative from the employer, a representative from the employee organization, and a third party neutral as chairperson) prepares a recommended advisory contract settlement.

good faith bargaining: where the employer and employee organization exchange and discuss proposals in a sincere and honest effort to reach a contract agreement on matters within the scope of bargaining.

grievance: an employee complaint or allegation that a collective bargaining contract provision has been violated. Also the process by which these allegations are investigated and a decision rendered to dismiss the allegation or remedy the violation.

impasse: parties have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile. Can be declared by either or both parties. (See Appendix C for detailed discussion of impasse procedures.)

last, best offer: the final proposal by each party after mediation.

management employee: an employee in a position designated by the employer (subject to PERB review) as having significant responsibilities for formulating district policies and administering district programs.

management rights: the public employer's authority over matters which do not require negotiations with the exclusive representative and are reserved to management (also may be referred to as "residual rights of management" or "management prerogatives").

mediation: advisory intervention and assistance by an impartial party, usually appointed by PERB, to facilitate a

negotiated agreement between the employer and the employee organization when at impasse.

meeting and negotiating: discussions between the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation. The result is usually a written document incorporating the agreements reached.

Public Employment Relations Board (PERB): agency established for regulating the collective bargaining process in the public schools (K-14). Also covers state employees under legislation known as SEERA and public higher education employees under HEERA. (See Appendix B for PERB's specific functions under SB 160.)

public school employer: the governing board of a school district, a county board of education, and/or a county superintendent of schools.

release time: time away from employee's regular job duties when meeting and negotiating or processing grievances. Under SB 160, a reasonable number of employees shall have the right to receive reasonable periods of release time without loss of compensation when pursuing these collective bargaining-related activities.

representation election: a vote conducted by PERB to determine whether a majority of employees in a bargaining unit want to be represented by an exclusive representative; if so, the employee organization with the largest vote becomes the exclusive representative.

Rodda Act: the collective bargaining law covering employees of public schools (kindergarten through community colleges). Also known as SB 160 or the Educational Employment Relations Act (EERA).

scope of representation or scope of bargaining: the mandatory issues defined in SB 160 for meeting and negotiating are wages, hours of employment, health and welfare benefits, leaves, transfers, reassignment, safety conditions of employment, class size, employee evaluation procedures, and grievance processing procedures. (PERB's decisions expanding this scope are in the process of judicial review.)

supervisory employee: an employee, regardless of job description, having authority in the interest of the employer to

hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline employees, or the responsibility to assign work to and direct them, adjust their grievances, or effectively recommend such action. In connection with the foregoing functions, the exercise of such authority may not be of a merely routine or clerical nature, but shall require the use of independent judgement.

unfair labor practices: actions of employee organizations or employers which are prohibited under SB 160. (See Appendix B for an overview of SB 160, the collective bargaining law.)

Appendix B
Overview of the Educational Employment Relations Act

The Educational Employment Relations Act (EERA) is the law governing collective bargaining in the public schools (K-14). Its stated purpose is to

> promote improvement of personnel management and employer-employee relations . . . by providing a uniform basis for recognizing the right of public school employees to join organizations of their choice, to be represented by such organizations in their professional and employment relationships with public school employers, to select one employee organization as the exclusive representative of the employees in an appropriate unit, and to afford certificated employees a voice in the formulation of educational policy.

To that end, EERA creates an administrative agency, the Public Employment Relations Board (PERB), to oversee the law; defines employees covered and excluded under the law; and establishes the scope of negotiations, public notice provisions and other aspects of collective bargaining.

Administration

Until January 1, 1981, the PERB consisted of three members appointed by the governor. Recently enacted legislation has expanded the PERB to five members appointed by the governor with the advice and consent of the State Senate. PERB members are appointed for staggered terms of five years, except that a person appointed to fill a vacancy only serves for the unexpired term of the member he or she succeeded. The governor also selects one of the members to serve as chairperson. Three of the five members of the board constitute a quorum and a majority. PERB administers two other statutes in addition to EERA and HEERA, covering employees of the state colleges and universities and SEERA, covering state employees.

In addition to the members of the board, the PERB staff includes an executive director; an executive assistant; legal counsel for each board member; separate regional offices and staffs in Los Angeles, Sacramento and San Francisco for statewide coverage; the office of administrative hearings with a chief administrative law judge and a staff of hearing officers to conduct the original hearings on charges filed by individuals, public employee organizations and public employers; the office of general counsel to pursue PERB's case

before the courts on requests for injunctive relief and appeals or enforcement of PERB decisions and orders; and clerical and support staff for the entire operation.

The PERB functions in the public sector in much the same way the National Labor Relations Board (NLRB) functions in the private sector. EERA gives PERB broad duties and powers, including the authority to

1. Determine in disputed cases, or otherwise approve, appropriate units.
2. Determine in disputed cases whether a particular item is within or without the scope of representation.
3. Conduct secret ballot representation elections and certify the results.
4. Maintain lists of qualified mediators, arbitrators and fact-finders.
5. Establish regulations for reviewing proposals to change unit determinations.
6. Adopt rules and regulations to carry out the law's purposes.
7. Hold hearings, subpoena witnesses and records, administer oaths, and take testimony on matters within its jurisdiction.
8. Investigate and issue orders to remedy charges of unfair labor practices or other alleged violations of the EERA.
9. Bring action in the courts to enforce its orders, decisions or rulings.
10. Decide contested matters involving recognition, certification, or decertification of employee organizations.

Public Notice

Initial proposals of both the employer's and the employees' representatives must be presented at a public meeting of the school board where they become public records. The public notice section is intended to give the public an opportunity to express its views.

Scope of Negotiations

Mandatory subjects are limited to matters relating to wages, hours and other terms and conditions of employment. Terms and conditions of employment are

1. Health and welfare benefits.
2. Leave, transfer, and reassignment policies.
3. Safety conditions of employment.
4. Class size.
5. Procedures for employee evaluation.
6. Organizational security.
7. Procedures for processing grievances.

Consultation subjects which the exclusive representative of

certificated personnel may consult on are

1. Definition of educational objectives.
2. Determination of course content and curriculum.
3. Selection of textbooks as modified by state law.

All matters not specifically listed are reserved to the school board and may not be a subject of meeting and negotiating. However, nothing may be construed to limit the right of the public school employer to consult with any employees or employee organization on any matter outside of the scope of negotiation.

Grievance Procedures and Arbitration

A negotiated contract may provide for final and binding arbitration of disputes involving the interpretation and application of the contract.

Organizational Security

A negotiated contract may provide that an employee may decide whether or not to join an employee organization unless the agreement calls for organizational security:

- *Maintenance of Membership* provides that an employee who decides to join an organization must maintain that membership in good standing for the duration of the contract.
- *Agency Shop* provides that an employee must either join an exclusive representative or pay the organization a service fee equivalent to the regular dues, initiation fees and general assessments, as a condition of continued employment.

Unfair Practices

Neither school boards nor employee organizations may engage in unfair practices. These include the following:

1. Reprisals, discrimination, restraint or coercion against employees for the exercise of their rights.
2. Failure to meet and negotiate in good faith.
3. Refusal to participate in good faith in the impasse procedures.
4. Causing or attempting to cause the other to commit unfair practices.

It is also an unfair practice for a school board to dominate or interfere with the formation or administration of any employee organization, or contribute financial or other support to it, or in any way encourage employees to join any organization in preference to another.

Unit Determination

The PERB decides questions of appropriate unit to make sure that there is a community of interest among the employees. Some examples of restrictions on such include the following:

1. A unit that includes classroom teachers must include all classroom teachers.

2. A unit of supervisors must include all (certificated or classified) supervisors in the district, and they may not be represented by the same organization which represents employees they supervise.
3. Classified and certificated employees may not be in the same negotiating unit.

Impasse

Impasse is defined as occurring when parties have reached a point in meeting and negotiating on matters within the scope of negotiations where future meetings would be futile.

Mediation

Either party *may* declare impasse and ask the PERB to appoint a mediator. If he or she cannot resolve the issue within 15 days and declares that factfinding is appropriate, either party may request that their differences be submitted to a factfinding panel.

Factfinding

If the impasse goes to factfinding, the following procedure is required:

1. Each party picks a panel member, and both select the chairperson.
2. The panel holds a hearing and each party attempts to prove its point of view is the accurate one.
3. The panel must then submit to the parties its findings and recommendations from the hearing based on the following criteria:
   a. Applicable laws, stipulations, interest of the public, and the financial status of the employer and employees.
   b. Comparison with employees involved in similar services in local or comparable communities.
   c. Consumer price index.
   d. The overall compensation received by employees, including direct wages, vacations, holidays and other excused time, insurance and pensions, medical benefits, the continuity and stability of employment and other benefits received.
   e. Such other facts, not confined to those above, normally considered in making such findings and recommendations.
4. The panel's recommendations are not binding and must be submitted privately to the parties. The employer must then make them public within 10 days, unless settlement occurs first.
5. The mediator may continue after the fact-finding on the basis of the panel's findings and recommendations.

(More on impasse procedures appears in Appendix C.)

Appendix C
Handling Impasse & Strikes

The course of collective bargaining, like true love, may not always "run smooth." The collective bargaining law recognizes that possibility and provides mechanisms for smoothing the course of negotiations which are not running smoothly.

Called "impasse procedures," these mechanisms include mediation and factfinding. Binding interest arbitration (as opposed to grievance arbitration) is not a part of the California law on collective bargaining. Nor does the law specifically allow employee strikes or employer lockouts. Factfinding and mediation, therefore, were envisioned by the Legislature as the processes by which strikes, lockouts, and binding interest arbitration would be averted.

Mediation

If, after a series of negotiating sessions, the parties reach a stalemate on one or several issues, either party may declare impasse. Upon declaration of impasse, the Public Employment Relations Board (PERB) will appoint an impartial professional mediator to assist the district and employee organization in reaching a negotiated agreement. This is a state-supported service, free to the parties.

The parties may instead elect to use the services of any other mutually agreed upon mediator to facilitate the process. Some districts have successfully relied upon community leaders, such as the mayor, to mediate disputes. There is nothing in the law to prohibit this as long as the mediator is mutually agreed upon and PERB's intervention is not sought.

Factfinding

If the mediator agrees that mediation is not sufficient, the next step is factfinding, if at least one party requests it. This consists of a hearing (the degree of formality of the hearing varies with each factfinder's style) at which each party presents its "case" to a factfinding panel. The three-person panel includes a representative from the employer, a representative from the employee organization and a neutral chairperson. The neutral, a professional factfinder/arbitrator, is chosen from a PERB-supplied list. The list contains an odd number of names and each party takes turns striking one name from the list. The remaining name is your factfinding chairperson. Legislation passed in September, 1980, allows the parties to

mutually agree upon a factfinding chairperson without PERB's intervention (AB 2859, effective January 1, 1981). If the parties cannot agree, the present procedure remains available.

After the hearing, the panel retires and submits one or more recommended advisory settlements. In some cases each party's representative on the panel will sign the neutral's recommendation. In other cases, either or both of the representatives will submit separate additional reports on areas in which they disagree with the neutral's recommendations.

At any point in the process, the parties may reach agreement. If they reach agreement before the report is issued and the process is completed — often the unpublished factfinding report is enough to bring the parties to agreement — the report need not be released.

If it is released, it must be "sunshined" for ten days. When that is completed the district may, under the law, institute (in lieu of a negotiated contract) the "last, best offer" it presented at the bargaining table. Or it may choose to return to the bargaining table for "post-factfinding" mediation. The terms and conditions of employment must be either the result of the district's implementation of its "last, best offer" or the negotiated agreement. School boards are cautioned never to modify their last, best offer before implementing it unless bargaining continues or a contract settlement occurs.

Concerted Activities

Common law in California is that, absent a specifically legislated right to do so, public employees have no right to engage in such concerted activities as strikes, work stoppages, slow-downs and sick-outs. While the California Legislature has never passed any legislation granting these private-sector concerted-activity rights to any public employees, the courts have issued decisions which have been less than definitive.

In 1979, the California Supreme Court issued a decision in the *San Diego* case, which gave PERB jurisdiction over school employee strikes which occurred prior to the exhaustion of the EERA impasse procedures. Since that time, several school districts have requested PERB to seek injunctions against striking employees. The results of PERB's intervention have been controversial and the issue is again in the courts.

If a strike is threatened or occurs in your district, prudence dictates that your district be well prepared with an emergency plan, tools to implement that plan and good legal advice. The California School Boards Association has prepared two tools to help. One, an

audio tape cassette package which includes supplementary written materials, is available for $25. The package includes all elements to be considered by a school district in planning its emergency program. The second tool is a packet of sample policies prepared by CSBA's legal counsel specifically to aid districts in strike planning. The sample policies are available without cost to all CSBA member school districts, upon request. Both the cassette and the policies packet may be ordered directly from CSBA.

Even if harmony has, until now, existed in your district's employment relations and you expect that situation to continue, part of a school board's responsibility includes planning well in advance for unforeseen events (such as school employee strikes) which could potentially threaten school operation. This planning also includes periodic review of your advance plans to ensure they are still adequate and consistent with changes in law and district circumstances.